105TH CONGRESS
1ST SESSION

S. 1136

To amend the Employee Retirement Income Security Act of 1974 to provide
that the State preemption rules shall not apply to certain actions under
State law to protect health insurance policyholders.

IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. DURBIN introduced the following bill; which was read twice and referred
to the Committee on Labor and Human Resources

A BILL

To amend the Employee Retirement Income Security Act
of 1974 to provide that the State preemption rules shall
not apply to certain actions under State law to protect
health insurance policyholders.

1 　*Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 　This Act may be cited as the "Employee Health In-

5 surance Accountability Act of 1997".

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 　(a) FINDINGS.—Congress finds that—

1 (1) employer-sponsored health insurers' treat-
2 ment rules and coverage determinations affect pa-
3 tients' receipt of health care by restricting the health
4 services that are available to patients;

5 (2) physicians' behavior is affected by employer-
6 sponsored health insurers' treatment and coverage
7 determinations;

8 (3) medical malpractice is almost exclusively
9 within the jurisdiction of the States;

10 (4) section 514(a) of the Employer Retirement
11 Income Security Act of 1974 (29 U.S.C. 1144(a)
12 ("ERISA")) generally preempts State lawsuits
13 against the entities that provide employee benefits
14 and retirement plans while allowing lawsuits against
15 physicians;

16 (5) there is a split among the United States
17 Courts of Appeals on whether ERISA preempts
18 medical malpractice suits against employer-spon-
19 sored health insurers;

20 (6) in the jurisdictions in which the Courts of
21 Appeals have held that ERISA preempts medical
22 malpractice suits against employer-sponsored health
23 insurers, patients who may have been injured due to
24 their employer-sponsored health insurers' treatment
25 and coverage determinations have been left without

1 a right of action under which to bring a lawsuit to

2 seek just redress for their injuries; and

3   (7) it is, therefore, necessary to amend ERISA

4 to clarify that State medical malpractice suits

5 against an employer-sponsored health insurer are

6 not preempted.

7 (b) PURPOSES.—The purposes of this Act are as fol-

8 lows:

9   (1) To restore accountability to employer-spon-

10 sored health insurers for the impact of their treat-

11 ment rules and coverage determinations on patients'

12 health.

13   (2) To increase patient protection from adverse

14 effects on their health due to their employer-spon-

15 sored health insurers' treatment rules and coverage

16 determinations.

17   (3) To provide patients with legal redress when

18 their employer-sponsored health insurers' treatment

19 rules and coverage determinations cause them harm.

20   (4) To provide more equitable assignment of li-

21 ability among health care decision-makers so that

22 plaintiffs are not forced to attempt to hold physi-

23 cians liable for the treatment rules and coverage de-

24 terminations of employer-sponsored health insurers.

SEC. 3. ERISA PREEMPTION NOT TO APPLY TO CERTAIN ACTIONS INVOLVING HEALTH INSURANCE POLICYHOLDERS.

(a) IN GENERAL.—Section 514(b) of the Employee Retirement Income Savings Act of 1974 (29 U.S.C. 1144(b)) is amended by redesignating paragraph (9) as paragraph (10) and by inserting after paragraph (8) the following paragraph:

"(9) Subsection (a) shall not be construed to preempt any cause of action under State law to recover damages for medical malpractice, personal injury, or wrongful death against any entity that arises out of the provision by such entity of insurance or administrative services to or for an employee welfare benefit plan maintained to provide health care benefits."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to causes of action arising on or after the date of enactment of this Act.

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